



## Good news for SMEs – European Parliament gives green light to development of pan-European patent

If you are a business operating in any area of technology, manufacturing, supply or research, then the chances are you need to know about patents. Like them or loathe them, patents have been written into British Law since the 17th century and the patent system looks set to stay.

Changes to the patent system in Europe are now afoot to keep pace with the progress in business and technology and to maintain the competitive position of Europe within the global market. These changes promise opportunities for companies to obtain simpler and cheaper patent protection throughout the European Union (EU). This is particularly welcome news for small to medium-sized enterprises (SMEs).

The European Parliament has now given its consent, by an overwhelming majority, for a group of member states to agree on an EU patent under the “enhanced cooperation” process. It is only the second time that the Parliament has used this process, which allows a sub-set of members to agree proposals when unanimous agreement cannot be reached. The consent of Parliament opens the way for the European Commission to submit proposals to establish the EU patent.

Patents offer a time-limited monopoly to the owners of new inventions. However, some consider the territorial nature of patent rights to be contrary to the key principles of the internal market of the EU, especially that of unhindered trade between member states. Some users of the patent system also consider the current system complicated and expensive. The European Commission has said recently that:

*“The current fragmented patent system in Europe is not conducive to creating the proper framework conditions for stimulating R&D. The existing patent system is perceived by businesses – especially SMEs – as too costly and complex”*

To address these issues, work has been ongoing since the 1970s to develop a unitary European patent. This work may, finally, be nearing fruition.

Within the EU, patents are still limited by territory; there is no unitary European patent. Patent protection can be pursued centrally through the European Patent Office but, once granted, steps must be taken to bring the resulting patent rights into force separately in each European country of interest. This process can involve translating the patent into many different European languages, which is very costly. The recent London Agreement has reduced translation costs somewhat, but the current system is still expensive and has been described as *“10 times more expensive than a comparable US patent”*.

The proposed EU patent will provide a single right valid across all countries that sign up to the system – this is likely to be most European Union countries, with the possible exceptions of Italy and Spain. This EU patent will co-exist with the current system, meaning that companies will have the opportunity to decide whether to seek patent protection in individual countries or to go with the single right covering all countries. With its reduced translation requirements, the EU patent will significantly reduce the cost of obtaining patent protection across the whole of Europe.

Another key feature of the proposed system is the establishment of a centralised European Patents Court to rule on validity and infringement issues. The cost of litigating patents before a European Patents Court should be significantly cheaper than the current system which involves separate litigation in each country. SMEs typically cannot afford the high costs of national litigation and the establishment of a European Patents Court is likely to bring litigation within the reach of smaller businesses and allow them to assert their patent rights more aggressively.



The significant progress now made by the European Parliament sets the stage for the European Commission to move ahead with establishing an EU patent. Encouragingly, all member states (except for Italy and Spain) have already indicated that they will sign up. Establishment of a unitary patent right in Europe should bring considerable cost savings to the process of obtaining and litigating European patents.

These latest developments in European patent law are promising and spell good news for start-ups and SMEs who often need to demonstrate a wide coverage of protection to secure funding but cannot afford the high costs of the current system. We believe that Oxford businesses, renowned for their research skills and innovation, are well-placed to take advantage of these changes to improve their competitiveness throughout Europe and the world.

Dehns is a world-class firm of IP professionals, specialising particularly in European patent prosecution and litigation. The attorneys in their thriving Oxford office work with many local start-ups and SMEs across the full spectrum of technologies. They understand what challenges small companies face and advise SMEs how to make best use of their valuable IP to secure funding and promote growth.

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